

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
GREENWOOD DIVISION

Jimmy Dalton, # 329139,)	C/A NO. 8:09-260-CMC-BHH
)	
Plaintiff,)	
)	OPINION and ORDER
v.)	
)	
Jon Ozmint, Director SCDC;)	
David Tatarsky, Gen Counsel; John Davis,)	
Director Health Services; Gerri Miro,)	
Acting Director; Robert Ward;)	
Daniel Murphy; and Glen Franz,)	
)	
Defendants. ¹)	
_____)	

This matter is before the court on Plaintiff's *pro se* complaint, filed in this court pursuant to 42 U.S.C. § 1983.

In accordance with 28 U.S.C. § 636(b) and Local Civil Rule 73.02 (B)(2)(d), DSC, this matter was referred to United States Magistrate Judge Bruce Howe Hendricks for pre-trial proceedings and a Report and Recommendation ("Report"). On July 23, 2009, the Magistrate Judge issued a Report recommending that Plaintiff's motion to amend be denied and Defendants' motion to dismiss be granted. The Magistrate Judge advised Plaintiff of the procedures and requirements for filing objections to the Report and the serious consequences if he failed to do so. Plaintiff filed objections to the Report on August 6, 2009, to which Defendants have responded.

¹Defendants South Carolina Department of Corrections, Medical Staff; Prison Health Services were dismissed from this action by previous order of this court. Order (Dkt. # 20, Mar. 26, 2009).

The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight, and the responsibility to make a final determination remains with the court. *See Mathews v. Weber*, 423 U.S. 261 (1976). The court is charged with making a *de novo* determination of any portion of the Report of the Magistrate Judge to which a specific objection is made. The court may accept, reject, or modify, in whole or in part, the recommendation made by the Magistrate Judge or recommit the matter to the Magistrate Judge with instructions. *See* 28 U.S.C. § 636(b).

After reviewing the record of this matter, the applicable law, the Report and Recommendation of the Magistrate Judge, and Plaintiff's objections, the court agrees with the conclusions of the Magistrate Judge. Accordingly, the court adopts and incorporates the Report and Recommendation by reference in this Order. Plaintiff has failed to state a claim of deliberate indifference to serious medical needs. Plaintiff's complaint raises claims of, at most, negligence and medical malpractice, which are not viable claims under 42 U.S.C. § 1983. Plaintiff's proposed amended complaint presented with his motion to amend does not remedy this deficiency.

Therefore, Plaintiff's motion to amend is **denied**. Defendants' motion to dismiss is **granted**. Plaintiff's federal cause of action is dismissed with prejudice for failure to state a claim. This matter is dismissed without prejudice as to any state law causes of action.

IT IS SO ORDERED.

s/ Cameron McGowan Currie
CAMERON MCGOWAN CURRIE
UNITED STATES DISTRICT JUDGE

Columbia, South Carolina
August 19, 2009